

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2116.04
COMPLAINT INVESTIGATOR:	Joe Bear
DATE OF COMPLAINT:	April 6, 2004
DATE OF REPORT:	May 6, 2004
REQUEST FOR RECONSIDERATION:	yes/June 4, 2004-no changes
DATE OF CLOSURE:	September 2, 2004

**COMPLAINT ISSUES:**

Whether Jay School Corporation violated:

511 IAC 7-25-5(c) by failing to, upon a parent's request for an independent educational evaluation (IEE), initiate a due process hearing to show the school's educational evaluation is appropriate or notify the parent in writing that the IEE will be at public expense, within 10 business days of the date the request was received.

**FINDINGS OF FACT:**

1. The Student is fifteen years old and attends the local high school. The Student is eligible for special education as a student with a hearing impairment.
2. The Complainant faxed a written request for an independent educational evaluation (IEE) to the School on January 23, 2004. The Director of Special Education spoke with the Complainant on February 2, indicated a willingness to pay for the evaluation but first wanted to know the Complainant's concerns. Although the Student had been tested at a private testing facility two weeks before, the Complainant wanted to have an IEE to address both achievement and IQ. The Director requested a copy of the private facility's testing results, so that she would know which tests had already been used, and so that new testing would not be invalidated when conducted within a short period of time from previous testing. The Director asked the Complainant to sign a release for speaking to the Student's therapist, "in case he had issues that needed to be addressed through this evaluation or suggestions." The Complainant agreed to send the testing results and the release.
3. The Director of Special Education spoke with the Complainant on March 5 because she had not received the private facility's testing results or the release regarding the therapist. According to the School's notes, the Complainant stated that she was under stress when she made the request for the IEE and did not want to proceed with it. However, the Complainant said that this was not correct; she had still intended to have the IEE. On March 31, after receiving clarification from the Director and her advocate, the Complainant again said that she wanted to have the IEE completed. The School did not provide the Complainant with written notice that the independent evaluation would be at public expense, nor did the School initiate a due process hearing.
4. In addition to not notifying the Complainant that it would pay for an independent evaluation, the School did not provide the Complainant with information about where to obtain an independent evaluation or the criteria applicable to an independent evaluation. Further, the School unilaterally selected an independent evaluator and had the evaluation conducted on April 16 and 20, 2004. The Complainant

did not learn that the evaluation had been conducted until a number of days after the fact. The Director stated that she has one or two trusted evaluators she routinely uses for IEEs, indicating that the evaluator was chosen solely at the Director's discretion.

## **CONCLUSION:**

511 IAC 7-25-5(c) requires the school to take one of two actions within ten business days of the parent's request for an IEE: notify the parent in writing that the IEE will be at public expense, or initiate a due process hearing to establish that the school's evaluation is appropriate. Findings of Fact #2 and #3 reflect that the School failed to take either of the requisite actions. Although Finding of Fact #4 indicates that the School eventually paid for the Student to be evaluated by someone other than a school employee, this does not excuse the School's failure to provide written notice. Therefore, a violation of 511 IAC 7-25-5(c) is found.

## **DISCUSSION:**

The selection of an independent evaluator is the parent's option, and it is the school's responsibility to furnish the parent with information about qualified individuals who meet the school's criteria for conducting the requested evaluation. When a parent requests an independent educational evaluation at public expense, 34 CFR §300.502(a)(2) requires the school to "provide information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations." 511 IAC 7-25-5(a) also requires the school to provide this information upon a parent's request, regardless of whether the parent has made a request for an independent evaluation. By providing this information to the parent, the parent is assured that the individuals on the list meet the school's criteria.

When a parent makes a request for an independent educational evaluation, the school may require, as a condition of paying for the independent evaluation, that the parent choose one of the individuals on the list. According to the U.S. Department of Education's Office of Special Education Programs, the school may do this, but only if the School's list is exhaustive of the available qualified evaluators in the geographic area. See, *Letter to Young*, 39 IDELR 98, (OSEP 3/20/03). The school may also inquire into the parent's concerns about the school's evaluation, but cannot delay its response to the parent's request if the parent declines to provide the information. Similarly, the School may not delay its response while waiting for or otherwise make its response contingent upon receipt of additional information from the parent.

The school may not choose the independent evaluator. In this case the school not only unilaterally determined who would conduct the parent-requested independent evaluation, but had the evaluation conducted in the absence of the parent's knowledge. Neither of these practices is in accordance with the intent or requirements of an independent educational evaluation. As such, additional corrective action is warranted.

**The Department of Education, Division of Exceptional Learners, requires corrective action based on the Findings of Fact and Conclusions listed above.**

## **CORRECTIVE ACTION:**

Jay School Corporation shall:

1. provide a written assurance statement that, within ten business days of a parent's request for an independent educational evaluation, the School will provide the parent with information about where an independent evaluation may be obtained and the school's criteria applicable to an independent evaluation, as well as take one of the following actions:
  - a. notify the parent in writing that the independent educational evaluation will be at public expense; or

- b. initiate a due process hearing to show the School's evaluation is appropriate.

The statement must also include an assurance that the school shall not delay its response to the parent's request pending a request for additional information or an inquiry into the parent's concerns about the school's evaluation. The assurance statement shall be sent to the Division no later than May 21, 2004.

2. provide a copy of the template or form letter to be used when the School notifies a parent of the School's response to the parent's request for an independent educational evaluation, as well as a copy of the document provided to parents that contains the information about where an independent evaluation may be obtained and the school's criteria applicable to an independent evaluation. These documents shall be submitted to the Division, along with the assurance statement, no later than May 21, 2004.
3. meet with the Complainant no later than May 21, 2004, to discuss the results of the evaluation obtained by the School, and determine if the Complainant wishes to have another independent evaluation conducted. If the Complainant requests another independent evaluation, the School shall provide all necessary information for the Complainant to select an independent evaluator, and the School shall pay for such evaluation. The School shall submit a written report of the results of that meeting, indicating the Complainant's decision regarding another independent evaluation, and if another independent evaluation is to be conducted, the report shall describe the actions taken by the School to ensure that the independent evaluation is appropriately obtained. The report shall be signed by the Director and the Complainant and submitted to the Division no later than June 4, 2004.